

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

GARY DEE BICE,

Plaintiff,

v.

JOHN JORDAN,

Defendant.

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No. 1:17-cv-76-JAR

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Gary Dee Bice, an inmate at the Southeast Correctional Center, for leave to commence this civil action without prepayment of the required filing fee. The motion will be denied.

28 U.S.C. § 1915(g) limits the ability of a prisoner, who has filed at least three claims that have been dismissed as frivolous, malicious, or for failure to state a claim, to obtain *in forma pauperis* status, and specifically:

In no event shall a prisoner bring a civil action ... under this section if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action ... in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g)(emphasis added). This provision has become commonly known as the “three strikes” rule, and has withstood constitutional challenges. *See Higgins v. Carpenter*, 258 F.3d 797, 799 (8th Cir. 2001), *Medberry v. Butler*, 185 F.3d 1189, 1192 (11th Cir. 1999).

Review of Court files reveals that Bice has had three or more dismissals that qualify as strikes under the statute. *See Bice v. Ester*, No. 1:10-cv-93-SNLJ (E.D. Mo. Sept. 13, 2010); *Bice v. Commission or Directors of Cape Girardeau City Police Dept.*, No. 1:11-cv-27-SNLJ

(E.D. Mo. Feb. 25, 2011); and *Bice v. Eastest*, 1:13-cv-181 SNLJ (E.D. Mo. Mar. 26, 2014). Therefore, he may only proceed in forma pauperis in this action if he “is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

In the complaint, Bice’s claims for relief center around unauthorized use of his bank card. Nothing in the complaint permits the conclusion that Bice is under imminent danger of serious physical injury. He must therefore pay the \$400.00 filing fee.


Accordingly,

IT IS HEREBY ORDERED that Gary Dee Bice’s motion for leave to proceed *in forma pauperis* (Docket No. 2) is **DENIED**.

IT IS FURTHER ORDERED that Gary Dee Bice shall pay the statutory filing fee of \$400.00 within twenty-one (21) days of the date of this Order.

Failure to timely comply with this Order shall result in the dismissal of this action.

Dated this 19th day of May, 2017.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE